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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/854,156	05/10/2001	Ernest W. Moody	MOODY #24	7134

24258 7590 12/26/2002

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EXAMINER

MENDIRATTA, VISHU K

ART UNIT	PAPER NUMBER
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3711

DATE MAILED: 12/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

34

Office Action Summary	Application No.	Applicant(s)	
	09/854,156	MOODY, ERNEST W.	
	Examiner	Art Unit	
	Vishu K Mendiratta	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

2. Claims 1,4,14,21,26 are rejected under 35 U.S.C. 102(e) as being anticipated by Williams.

Williams teaches a method of playing a poker game with at least five card final hand (Fig.1-3), player selecting to play at least two hands (col.4, lines 14-16), dealing and displaying partial hands less than five cards each (32,34) and same cards in each hand (32,34), displaying additional cards (col.4, lines 24-25), poker ranks are determined and amount won by players (col.4, lines 27-32).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 2,3,5,8-13, 15-17, 20, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Johnson.

Williams teaches all limitations of these claims except that it does not teach variation in total number of cards in a final hand and a total number of cards in a partial hand.

Johnson teaches variation in total number of cards in final as well as partial hand (col.4, lines 24-32). In order to make the game attractive, it would have been obvious to create variations by varying number of cards in final and partial hands. One of ordinary skill in art at the time the invention was made would have created such variations.

Examiner views limitations in claims 13,20 and 22 as choices as preferred by gaming houses.

5. Claims 6,7,18,19, 23,24 rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Yoseloff.

Williams teaches all limitations of these claims except that it does not teach dealing additional cards from a depleted deck. Yoseloff teaches using a depleted deck for such purposes (col.10, lines 30-36). Examiner views such practice as commonly known in the art area and also a choice of gaming house. One of ordinary skill in art at the time the invention was made would have used a depleting deck for dealing additional cards.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over Williams in view of Kadlic.

Williams teaches all limitations of these claims except that it does not teach player selecting cards in partial hands. Kadlic teaches a player selecting cards for partial hands prior to completing final hands (Abstract). In order to make the game interesting,

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it would have been obvious to allow players to select cards in partial hands. One of ordinary skill in art at the time the invention was made would have allowed players to select cards in partial hands.

Terminal Disclaimer

7. The terminal disclaimer filed on 10/7/02 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of 5,732,950 and 6,007,066 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Response to Arguments

8. Applicant's arguments filed 10/7/02 have been fully considered but they are not persuasive. Applicant argues that William does not disclose a stud poker. Examiner takes the position that it is not important whether William discloses or does not disclose a stud poker. What is important is that it discloses all limitations/steps in applicant's claims. Examiner does not agree that William deals only one partial hand. The two cards dealt initially are treated as two cards for all finished hands. Applicant further argues that applicant's game has no draw and discard step. Examiner's position is that the claims are examined for what is in the claim and not for what is not in the claim.

Johnson teaches initially dealt cards being more or less in number and does not eliminate any draw /discard step as argued by applicant.

Again, regardless of whether Kadlic is a draw poker and William & Kadilac would result in a draw poker, the combination of Kadlic and William teaches all claimed limitations.

Yoseloff clearly teaches dealing cards from depleted deck.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vishu K Mendiratta whose telephone number is (703) 306-5695. The examiner can normally be reached on Mon-Fri 8AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Sewell can be reached on (703) 308-2126. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

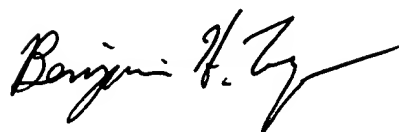
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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Vishu K Mendiratta
Examiner
Art Unit 3711

VKM
December 18, 2002

A handwritten signature in black ink, appearing to read "Benjamin H. Layno", with a long horizontal flourish extending to the right.

Benjamin H. Layno
Primary Examiner